

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Telecommunications Carriers Eligible to)	WC Dkt. 09-197
Receive Universal Service Support)	
)	
Lifeline and Link Up Reform and)	WC Dkt. 11-42
Modernization)	
)	

COMMENTS OF LIFELINE CONNECTS COALITION

The Lifeline Connects Coalition (Coalition),¹ by its attorneys, hereby submits comments to the Commission in response to the Wireline Competition Bureau’s (Bureau’s) Public Notice² seeking comment on the request for reconsideration regarding the Lifeline Broadband Provider (LBP) designation process filed by 39 consumer advocacy and civil society organizations.³

The Coalition supports the Civil Society Letter’s request that the Commission “reverse the Wireline Competition Bureau’s Order on Reconsideration that has undermined Lifeline’s important goal of bringing affordable communications services to poor people” and “reject any further efforts to undermine Lifeline.”⁴ Further, the Commission should grant the other LBP

¹ The members of the Lifeline Connects Coalition are American Broadband & Telecommunications; Blue Jay Wireless, LLC; i-wireless, LLC; and Telrite Corporation.

² *See Wireline Competition Bureau Seeks Comment on Request for Reconsideration Concerning Lifeline Broadband Providers*, WC Docket Nos. 09-197, 11-42, Public Notice, DA 17-213 (WCB Mar. 2, 2017) (Public Notice).

³ *See Letter from 18MillionRising.org et al. to the Honorable Ajit Pai, Chairman, Federal Communications Commission, et al.*, WC Docket No. 11-42 (Feb. 23, 2017) (Civil Society Letter).

⁴ Civil Society Letter at 2. *See also Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, Order on Reconsideration, DA 17-128 (rel. Feb. 3, 2017) (LBP Reconsideration Order).

petitions that are pending and that meet the applicable qualifications, including those of Coalition members. However, to the extent that the Commission does not believe that it has the statutory authority to grant LBP designations as specified in the Lifeline Modernization Order,⁵ the Bureau should grant LBP or wireless ETC authority to Lifeline providers in those jurisdictions in which it clearly has authority – the 12 federal jurisdiction states – pursuant to the streamlined timelines established for LBPs. The Commission should also encourage states to follow the same streamlined timelines for processing ETC designations and promote regulatory certainty by streamlining decision-making on compliance plan amendments, transfers of control, appeals and enforcement actions. Further, designating Lifeline ETCs in new state territories will promote competition, innovation and consumer choice, and with the low improper payment rate, does not carry the risk of material increased waste, fraud and abuse.

I. The Commission Should Reconsider its Position on LBPs or Grant ETC Authority in the Federal Jurisdiction States Pursuant to a Streamlined Process

The Coalition agrees with the Civil Society Letter that the Commission should pave the way for Lifeline broadband service offerings by reversing the Order on Reconsideration and reinstating the LBP designations of the nine designated providers. Further, the Commission should grant the other LBP petitions that are pending and that meet the applicable qualifications, including those filed by Coalition members. However, to the extent that the Commission does not believe that it has the statutory authority to grant LBP designations as specified in the Lifeline Modernization Order, the Bureau should grant LBP or wireless ETC authority to Lifeline providers in those jurisdictions in which it clearly has authority – the 12 federal

⁵ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (2016) (Lifeline Modernization Order).

jurisdiction states. The Commission should grant such designations pursuant to the streamlined timelines established for LBPs in the Lifeline Modernization Order and encourage states that designate ETCs to do the same. The Commission should take these and other measures to provide regulatory certainty in the Lifeline program to promote a more effective public-private partnership to serve low-income Americans.

Chairman Pai and Commissioners Clyburn and O’Rielly all support modernizing the Lifeline program to support broadband for low-income Americans.⁶ Chairman Pai has stated that “modernizing the Lifeline program to support affordable, high-speed Internet access for our nation’s poorest families is a worthy goal.”⁷ Further, in his prepared remarks for last week’s oversight hearing in the Senate Commerce Committee, Chairman Pai discussed his goals of closing the digital divide and promoting innovation, including ending the Commission’s investigation into free-data offerings of wireless carriers.⁸ The Chairman talked about promoting innovation, enhancing competition and benefiting low-income Americans, as well as relying on “consumer choice to sort out what innovations best serve the public interest.”⁹ The Coalition shares those goals.

For many years competition in the provision of Lifeline services has been artificially restricted by the Commission and many states that have failed to process and act on ETC

⁶ Commissioner Clyburn voted to adopt the Lifeline Modernization Order that modernized the Lifeline program to support broadband. *See also* Lifeline Modernization Order, Dissenting Statement of Commissioner O’Rielly at p. 218 (calling for the program to “shift to include support for broadband service”).

⁷ Lifeline Modernization Order, Dissenting Statement of Commissioner Pai at p. 202.

⁸ *See* Testimony of FCC Chairman Ajit Pai Before the Senate Commerce, Science, and Transportation Committee, “Oversight of the Federal Communications Commission” at 3 (Mar. 8, 2017).

⁹ *Id.*

petitions (as they are required by the Communications Act to do¹⁰) to allow additional competitors into the marketplace to innovate and serve low-income Americans. It was against this backdrop that the Commission in the Lifeline Modernization Order determined that it had the authority to designate LBPs in all states and developed a streamlined ETC designation process to “facilitate market entry and allow new competition to enter the Lifeline market.”¹¹ The Lifeline Modernization Order established a 60-day expedited review process for LBPs that met two criteria (after which they are deemed granted by the Commission) and provided that the Bureau “shall act” on any LBP petition that does not meet the streamlined criteria within 6 months.¹² This streamlined process provided some regulatory certainty in a program that is sorely lacking it.

The Coalition did not advocate for the LBP designation, but it did call for regulatory certainty through shot clocks and streamlined processes for federal ETC petitions, compliance plans and audit appeals, and for the Commission to strongly encourage the states to act in the same reasonable timeframes.¹³ In the Petition for Reconsideration of the Lifeline Modernization Order filed by the Coalition and others, we thanked the Commission for “recognizing that the existing ETC designation process is ‘unnecessarily burdensome and hinders competition in the Lifeline market’” but argued that the Lifeline Modernization Order “arbitrarily streamlines only the process for broadband providers, leaving voice service ETCs to face a costly, complex and

¹⁰ See 47 U.S.C. §§ 214(e)(2), (6) (stating in (e)(2) that states shall...designate and in (e)(6) that the Commission shall...designate if the common carrier meets the requirements).

¹¹ Lifeline Modernization Order ¶ 277.

¹² See *id.* ¶¶ 278, 281.

¹³ See Comments of the Lifeline Joint Commenters, WC Docket Nos. 11-42, 09-197, 10-90 at 52-53 (Aug. 31, 2015).

uncertain designation process.”¹⁴

Even if the Commission does not believe that it has the statutory authority to grant LBP ETC designations in all states, there are actions that it can take to promote innovation, enhance competition and modernize the Lifeline program to support broadband and benefit low-income Americans. Specifically, the Commission could grant LBP or ETC designations in the 12 federal jurisdiction states – Alabama, Connecticut, Delaware, the District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, Texas and the Commonwealth of Virginia.¹⁵ These states cannot or will not designate wireless Lifeline ETCs generally because they lack authority over wireless services and the Commission therefore clearly has authority to designate ETCs to provide Lifeline voice and broadband services.

Further, the Commission can provide regulatory certainty in the Lifeline program. It should act on requests for ETC authority in the federal jurisdiction states in the 60-day streamlined and six month standard processing timeframes established for LBPs in the Lifeline Modernization Order to address the delays and burdens in the current ETC designation process recognized by the Commission last year. The Commission should also make other decisions in a streamlined manner, including acting on compliance plan amendments and transfers of control. In addition, the Commission can strongly encourage the states to act on ETC designation petitions within the same 60-day streamlined and six month standard timeframes to promote

¹⁴ Joint Lifeline ETC Petitioners Petition for Partial Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, 10-90 at 18 (June 23, 2016).

¹⁵ Limiting LBP designations to the 12 federal ETC jurisdictions would alleviate concerns raised by the National Association of Regulatory Utility Commissioners (NARUC) and the State Petitioners in the appeal of the Lifeline Modernization Order currently pending before the U.S. Court of Appeals for the D.C. Circuit that the Commission may have exceeded its authority under the Communications Act when it established the streamlined LBP designation process. *See NARUC v. FCC*, No. 16-1170, Brief of Petitioner (filed Jan. 30, 2017) (NARUC Brief); *NARUC v. FCC*, No. 16-1170, State Petitioners’ Opening Brief (filed Jan. 30, 2017).

competition and innovation and allow consumers to choose which innovative service offerings best serve the public interest. The Commission should also provide regulatory certainty by taking the appropriate final action on Notices of Apparent Liability (NALs) (which may be exoneration) within one year as the Chairman has suggested.¹⁶ Such actions to establish regulatory certainty will promote a healthier public-private partnership to effectively serve low-income Americans.

II. With its Low Improper Payments Rate, Increased Competition and Lifeline Program Growth Does Not Equate to Waste, Fraud and Abuse in the Lifeline Program

With its low improper payment rate and the recent reductions in Lifeline program outlays, there is room for additional competition without risking material increases in waste, fraud and abuse. The LBP Reconsideration Order stated that its action “would promote program integrity by providing the Bureau with additional time to consider measures that might be necessary to prevent further waste, fraud, and abuse in the Lifeline program.”¹⁷ The Coalition agrees with the Civil Society Letter that this represents a “retreat to the long-discredited argument that waste, fraud and abuse are rampant in the program.”¹⁸ On the contrary, the Lifeline program has a very low improper payment rate; lower than the government average. According to the Commission’s Fiscal Year 2016 Agency Financial Report, “the estimated

¹⁶ Remarks of Commissioner Ajit Pai at the PLI/FCBA 33rd Annual Institute on Telecommunications Policy & Regulation at 5-6 (Dec. 3, 2015) (arguing for action within one year of an NAL and stating “if someone hasn’t violated our rules, then what follows should be exoneration, not the indefinite cloud of a possible enforcement action.”).

¹⁷ LBP Reconsideration Order ¶ 7.

¹⁸ Civil Society Letter at 2.

improper payment rate [for Lifeline] was 2.93% with a margin of error plus or minus 2.44%.”¹⁹

The Commission also clarified that this estimate is the improper payment rate for those Lifeline rules that had previously been identified as subject to the highest improper payments, not the program as a whole.²⁰ According to the latest government figures, the estimated federal government-wide improper payments rate for fiscal year 2016 was 4.67% of program outlays.²¹ Lifeline is far from “fraud-infested.” Rather, the program is the victim of sensational “gotcha” media pieces and political rhetoric that feed a perception of fraud not borne out by the facts.

In addition, the Lifeline program serves only a fraction of those low-income Americans that are eligible for support and the size of the program has steadily declined over the past four years. The Commission reported in the Lifeline Modernization Order a Lifeline participation rate of approximately 32 percent.²² In addition, the Lifeline disbursements and subscribers served has been steadily decreasing, from \$2.1 billion and 17.16 million subscribers in 2012 to \$1.79 billion and 14.48 million subscribers in 2013, to \$1.63 billion and 13.44 million subscribers in 2014 to \$1.5 billion and 12.5 million subscribers in 2015.

¹⁹ Federal Communications Commission, Agency Financial Report Fiscal Year 2016, 69 (rel. Mar. 1, 2017). This rate is significantly lower than the estimated federal government-wide improper payments rate for fiscal year 2016 of 4.67%.

²⁰ *Id.* at 68.

²¹ See Improper Payment Rates Across the Federal Government, PaymentAccuracy.gov (last visited Mar. 15, 2017), available at <https://paymentaccuracy.gov/improper-payment-rates-across-the-federal-government/>. Similarly, a March 2015 Government Accountability Office (GAO) study estimated federal government-wide improper payments rate for fiscal year 2014 was 4.5% of program outlays. See Testimony Before the Committee on Homeland Security and Governmental Affairs, U.S. Senate, Improper Payments: Government-Wide Estimates and Use of Death Data to Help Prevent Payments to Deceased Individuals, GAO-15-482T (Mar. 16, 2015), available at <http://www.gao.gov/assets/670/669026.pdf>.

²² See Lifeline Modernization Order n. 145 (citing Universal Service Administrative Company, USAC Data on the federal Universal Service Lifeline Program at 5 (2016), <http://apps.fcc.gov/ecfs/document/view?id=60001517799>).

In order to promote competition to provide improved and innovative Lifeline broadband service offerings, the Commission and the states must designate new Lifeline providers and existing Lifeline providers in new states so that providers can achieve scale, reduce network costs and undertake regional and nationwide distribution and other arrangements to utilize increasingly efficient distribution and enrollment platforms. With its low improper payment rate and the recent reductions in Lifeline program outlays, there is room for additional competition without risking material increases in waste, fraud and abuse.

For all of the reasons stated herein, the Coalition respectfully requests that the Commission grant the request for reconsideration set forth in the Civil Society Letter and grant additional LBP designations, or alternatively, grant ETC authority to Lifeline providers in the 12 federal jurisdiction states pursuant to streamlined timelines to promote regulatory certainty. Designating Lifeline ETCs in new state territories will promote competition, innovation and consumer choice, and with the low improper payment rate, does not carry the risk of material increased waste, fraud and abuse.

Respectfully submitted,



John J. Heitmann
Joshua Guyan
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8400

*Counsel to the Lifeline Connects
Coalition*

Dated: March 16, 2017